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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ALLEN JACKSON,

Defendant and Appellant.

B232278

(Los Angeles County Super. Ct.
No. MA045723)

APPEAL from a judgment of the Superior Court of Los Angeles County, Thomas R. White, Judge. Affirmed.

Suzann E. Papagoda, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Taylor Nguyen and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

After the trial court denied his motion to suppress evidence under Penal Code section 1538.5,¹ defendant and appellant Charles A. Jackson entered a plea of no contest to counterfeiting a State of California seal in violation of section 472 and admitted suffering a prior conviction under the three strikes law (§§ 1170.12, subds. (a)–(d), 667, subds. (b)–(i)). A misdemeanor charge was dismissed under the case settlement. The court imposed a sentence of the low term of 16 months in state prison doubled, pursuant to the three strikes law, for a total of 32 months. Execution of sentence was suspended and defendant was placed on formal probation for a period of three years. In this timely appeal from the judgment, defendant contends the evidence of the offense was the product of a warrantless search that violated the Fourth Amendment. We affirm.

PROCEEDINGS ON THE MOTION TO SUPPRESS

Defendant filed a motion to suppress a picture identification card obtained during a Section 8 compliance investigation.²

Deputy Sheriff James Speed testified for the prosecution. On May 18, 2009, he and Deputy Grijalva accompanied Section 8 Officer Mullins to the home of Section 8 housing funds recipient Varla Wisniewski to check whether she lived there and whether any unauthorized individuals lived with her. Deputy Speed was not there to investigate criminal activity.

Wisniewski and defendant were in the house. Deputy Speed had defendant come outside onto the front porch, where Deputy Speed asked defendant his name, and defendant replied his name was Kevin Boozer. Deputy Speed asked defendant if he had any identification, and defendant answered “it was upstairs in his pants pocket in his

¹ All statutory references are to the Penal Code unless indicated otherwise.

² Section 8 is a federal housing subsidy program administered by the United States Department of Housing and Urban Development “[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing[.]” (42 U.S.C. § 1437f.)

bedroom.” Wisniewski gave Deputy Speed permission to enter her house and showed him which bedroom to examine. Deputy Speed went upstairs to get the identification from defendant’s bedroom. He retrieved an identification card from defendant’s pants pocket or from a wallet in defendant’s pants pocket and showed it to defendant. The photograph on the card depicted defendant. Defendant said it was his identification.

The trial court denied the motion to suppress.

DISCUSSION

Defendant contends the search was unreasonable and violated the Fourth Amendment. We disagree with the contention.

Standard of Review

“In ruling on a motion to suppress, the trial court finds the historical facts, then determines whether the applicable rule of law has been violated. “We review the court’s resolution of the factual inquiry under the deferential substantial-evidence standard. The ruling on whether the applicable law applies to the facts is a mixed question of law and fact that is subject to independent review. [Citation.]” (*People v. Saunders* (2006) 38 Cal.4th 1129, 1134[.])’ ([*People v.*] *Hernandez* [(2008)] 45 Cal.4th [295,] 298-299.)” (*People v. Greenwood* (2010) 189 Cal.App.4th 742, 745.)

Section 8 Housing Rules

Title 24 Code of Federal Regulations section 982.551 provides in pertinent part: “(h) Use and occupancy of unit. -- (1) The family must use the assisted unit for residence by the family. The unit must be the family’s only residence. [¶] (2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded

custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).”

Regulatory Searches Under the Fourth Amendment

“The Fourth Amendment³] protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Terry v. Ohio* (1968) 392 U.S. 1.)” (*People v. Greenwood*, *supra*, 189 Cal.App.4th at p. 746.) The burden is on the prosecution to establish that a warrantless search was justified by an exception to the warrant requirement. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

“An administrative or regulatory search is one ‘conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime.’ [Citation.] Such searches are permissible under the Fourth Amendment ‘though not supported by a showing of probable cause directed to a particular place or person to be searched.’ [Citations.] Administrative searches may be conducted without probable cause in part because they usually involve ‘less of an intrusion on personal privacy and dignity than that which generally occurs in the course of [a] criminal investigation.’ [Citation.] Furthermore, administrative or regulatory searches are often conducted under circumstances where the burden of obtaining a warrant would frustrate the governmental purpose behind the search. [Citation.]” (*Estes v. Rowland* (1993) 14 Cal.App.4th 508, 522.)

“[C]haracterizing the searches as ‘administrative’ does not end the inquiry. Even if the searches were authorized as regulatory searches, the court was authorized, and

³ The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

indeed obligated, to analyze the manner in which the searches were conducted to insure constitutional safeguards were being met. ‘To pass constitutional muster, an administrative search must meet the Fourth Amendment’s standard of reasonableness. . . . [¶] To meet the test of reasonableness, an administrative screening search must be as limited in its intrusiveness as is consistent with satisfaction of the administrative need that justifies it.’ [Citation; *Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1329 [‘The touchstone for all issues under the Fourth Amendment and article I, section 13 of the California Constitution is reasonableness.’])]” (*Estes v. Rowland, supra*, 14 Cal.App.4th at pp. 523-524.) “In assessing the reasonableness of an administrative search we must “balanc[e] the need to search against the invasion the search entails.”” (*People v. Hyde* [(1974) 12 Cal.3d 158, 166], quoting *Camara v. Municipal Court* (1967) 387 U.S. 523, 536-537.)” (*Estes v. Rowland, supra*, at p. 523.)

“The prohibition [against warrantless entry to search for specific objects] does not apply . . . to situations in which voluntary consent has been obtained, either from the individual whose property is searched, see *Schneckloth v. Bustamonte*, 412 U.S. 218, 36 L. Ed. 2d 854, 93 S. Ct. 2041 (1973), or from a third party who possesses common authority over the premises, see *United States v. Matlock* [(1974) 415 U.S. 164], 171[.]” (*Ill. v. Rodriguez* (1990) 497 U.S. 177, 181; accord, *People v. Boyer* (2006) 38 Cal. 4th 412, 445 [“A warrantless search may, of course, be based on the consent of a person, other than the accused, who has joint dominion or control over the area or thing to be searched”].)

Substantial evidence supports the finding that retrieval of defendant’s identification card resulted from a proper regulatory search. Deputy Speed was not conducting a criminal investigation for evidence of a crime. His purpose was to investigate the Section 8 assistance recipient’s compliance with the requirement that only the aid recipient and approved members of her family reside in the home. (24 C.F.R. § 982.551(h).) The presence of an adult male who stated his pants were upstairs in his bedroom reasonably gave rise to a suspicion defendant lived there in violation of Section 8, warranting further investigation. A review of defendant’s identification card

would provide identification and residence information relevant to the compliance check. Deputy Speed did not search defendant's possessions wantonly. His intrusion was limited to retrieving one specific object from one specific location, the pocket of defendant's pants in defendant's bedroom, where defendant had stated the identification would be found. Wisniewski admitted Deputy Speed into the premises and showed him the room where defendant stated his pants could be found. Defendant's silence, without voicing protest or disapproval, knowing what Deputy Speed intended to do, indicates the intrusion on his privacy and dignity interests was not great. Balancing the need to inspect defendant's identification against the very limited nature of the intrusion, we conclude the intrusion was reasonable for the purpose of satisfying the regulatory need that justified it. The Fourth Amendment was not violated.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.